SENATE REPORT ON H. R. 7716

Senate Report No. 1045, 72d Cong.,
On H. R. 7716

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NOTE: The reports on H. R. 7716 are included in this compilation because several of the provisions of the Communications Act of 1934 were derived from that bill. H. R. 7716 passed both houses but was pocket-vetoed.

* * * *

Mr. Dill, from the Committee on Interstate Commerce, submitted the following

REPORT

[To accompany H. R. 7716]

The Committee on Interstate Commerce, to whom was re-referred the bill (H. R. 7716) to amend the Radio Act of 1927, approved February 23, 1927, as amended (USC Supp. V, Title 47, Ch. 4), and for other purposes, having held further hearings and considered the same, do report the bill back to the Senate with certain amendments and the recommendation that the bill as amended do pass.

This bill, as it came from the House of Representatives, provided for amendment of 12 different sections of the Radio Act of 1927, and the report of the Committee on Merchant Marine, Radio, and Fisheries is so complete that your committee believes it will be most helpful to the understanding of the proposed changes by the House as well as to consideration of the amendments by the Senate to include most of that report herewith, as follows:

* * * *

ANALYSIS OF THE BILL

[¶10:991] This bill amends 12 different sections of the Radio Act of 1927 by clarifying and amplifying provisions dealing chiefly with procedure and administration, and also contains a section forbidding the broadcast by means of any radio station, any information concerning any lottery, gift enterprise, or similar scheme, offering prizes, dependent in whole or in part upon lot or chance, and fixing a penalty for such violation.

Section 1 simply adds the words "the jurisdiction of" before the words "United States" in line 5 of page 1. This amendment was originally suggested by counsel for the Radio Commission.

[¶10:993] Section 5 authorizes the Commission to require the painting and/or elimination of radio towers if in its judgment such towers constitute, or may constitute, a menace to air navigation.

Section 6 of the bill amends §9 by eliminating the territories and possessions from the zone system, and also by subjecting renewals of licenses to the same restrictions governing the original granting thereof.

Section 7 amends §10 of the Act by clarifying the purpose of the first sentence in the section. Provision is also made for the issuance of licenses, renewals, and modifications without formal written application in cases of emergency, but for terms no longer than three months. Provision is also made for the issuance of emergency permit to vessels of the United States at sea.

Section 8 limits the prohibition in §12 of the Act against granting licenses to aliens by permitting such grant when radio facilities are required by Act of Congress or a treaty to which the United States is a party. This amendment is necessary because certain vessels of American registry, which are required by other provisions of the radio laws to be equipped with radio, are owned by aliens or by corporations over 20 percent of the stock of which is owned by aliens. This amendment will remedy the present inconsistency in the laws.

[¶10:994] On page 10, line 7, after the word "which" the committee has struck out the words "any officer or director is an alien" and inserted the words "more than one-fifth of the officers or directors are aliens". The purpose of this amendment is to make the provision regarding directors or officers of any corporation that might directly or indirectly control licenses conform to the provision of the present law that provides that not more than one-fifth of the capital stock of the corporation may be voted by aliens or their representatives.

Your committee held hearings on this provision, at which representatives of the Navy Department and representatives of the International Telephone & Telegraph Co. appeared and discussed the matter quite fully. While it is the belief of the committee that radio communications should be kept strictly under the control of American citizens and American corporations, it is believed no serious injury or handicap will result from permitting not to exceed one-fifth of the officers to be aliens or one-fifth of the capital stock to be voted by aliens. Whatever apparent objection there might be to this provision from the standpoint of war or emergency leading to war becomes of little importance when it is remembered that under the Radio Law of 1927 the President has full power to seize all radio stations in the United States in case of war or threat of war. To prohibit a corporation from having any alien representation whatsoever among its officers or in the ownership of its stock would probably seriously handicap the operation of those organizations that carry on international communications and have large interests in foreign countries in connection with their international communications. Your committee believes such a restriction is entirely unnecessary. This amendment further restricts alienation by including indirect transfers by transfer of control of corporations.

[¶10:995] Section 9 amends §14 of the Radio Act relating to the revocation of licenses. The House language provided for revocation, modification or

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EXHIBIT 2

Senate Report S. 3285
73rd Congress 2nd Session

Calendar No. 830

73D CONGRESS, 2d Session } SENATE { REPORT No. 781

COMMUNICATIONS ACT OF 1934

APRIL 17 (calendar day, APRIL 19), 1934.—Ordered to be printed

Mr. DILL, from the Committee on Interstate Commerce, submitted the following

REPORT

[To accompany S. 3285]

The Committee on Interstate Commerce, to whom was referred the bill (S. 3285) to provide for the regulation of interstate and foreign communications by wire or radio, and for other purposes, having considered the same, report the same with amendments and, as amended, recommend the bill do pass.

The purpose of this bill is to create a communications commission with regulatory power over all forms of electrical communication, whether by telephone, telegraph, cable, or radio. Under the Radio Act of 1927, the Radio Commission licenses radio stations. Since 1910 the Interstate Commerce Commission has had some jurisdiction over telephone, telegraph, and wireless common carriers. Likewise the Postmaster General has certain jurisdiction over these companies. There is a vital need for one commission with unified jurisdiction over all of these methods of communication.

The original bill (S. 2910) was the subject of extensive public hearings. Following those hearings a subcommittee considered that bill in detail. Attorneys from the Interstate Commerce Commission, the Radio Commission, and the State Department assisted the subcommittee. The subcommittee made many tentative changes. Those changes were written into the new bill, S. 3285. This bill was considered in detail by the full committee and is the subject of this report.

In originally framing the bill two courses were open. One was to prepare a detailed and practicable bill which incorporated all legislation pertinent to the subject. The other was to draft a short bill creating the Commission and delegating to it by reference the powers now vested in the Radio Commission, the Interstate Commerce Commission, and the Postmaster General.

Section 308 is copied from section 10 of the Radio Act as modified by H.R. 7716, which adds the requirement that modifications and renewals of licenses may be granted only upon written application. This is the present practice of the Radio Commission. The two provisos permit the Commission to issue temporary licenses in cases of emergency.

Section 309 provides for hearings and is copied from section 11 of the Radio Act.

Section 310, dealing with limitation on foreign holding and transfer of licenses, is adopted from section 12 of the Radio Act as modified by H.R. 7716, with additional limitations as to foreign ownership.

Section 310 (a) (4) modifies the present law by (1) refusing a station license to a company more than one fifth of whose capital stock is owned of record by aliens, and (2) by changing the words "may be voted by aliens" in the present law to "is voted by aliens". The purpose of this is to guard against alien control and not the mere possibility of alien control.

Section 310 (a) (5) seeks to insure the American character of holding companies whose subsidiaries operate under radio licenses granted by the Commission. The provision has been made effective after June 1, 1935, in order to give the companies affected an opportunity to bring their organizations into harmony with the provisions of the paragraph. Whatever apparent objection there might be to one fourth foreign ownership from the standpoint of war or emergency leading to war, becomes less important when it is remembered that the President has full power to seize all radio stations in the United States in case of war or threat of war.

To prohibit a holding company from having any alien representation or ownership whatsoever would probably seriously handicap the operation of those organizations that carry on international communications and have large interests in foreign countries in connection with their international communications. Such a rigid restriction seems unnecessary.

Section 310 (b) is section 12 of the Radio Act as modified by H.R. 7716, requiring the Commission to secure full information before giving its consent to the transfer of a license.

Section 311 is based on section 13 of the radio act but it also modifies the present law in certain respects.

The effect of the alteration is to bring section 311 more closely into harmony with section 313. If the court revokes a license the Commission should not grant an application for another license to the same parties. If, however, the court has adjudged the person guilty, but has not revoked the license, the Commission can determine whether or not public interest will be served by the granting of a license.

Section 312 is adapted from section 14 of the Radio Act and confers upon the Commission the power to suspend radio licenses. Under the existing law the Commission must revoke a license or permit an offending licensee to go unpunished. This provision would permit the Commission to suspend licenses in cases where some punishment was justified but where revocation would be too harsh. The proviso reduces the time within which the licensee may take exception to the Commission's action in revoking or suspending its license to 15 days. This is sufficient for the licensee to take exception and to request a hearing.

EXHBIT 3

Conference Report
on S. 3285
73rd Congress 2nd Session

Conference Report on Communications Act
of 1934, House Report No. 1918, 73rd Cong.

Mr. Rayburn, from the Committee of Conference,
submitted the following

CONFERENCE REPORT

[To accompany S 3285]

The Committee of Conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 3285) to provide for the regulation of interstate and foreign communications by wire or radio, and for other purposes, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

[The text of the Act is set forth].

* * * *

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

[¶10:1017] The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 3285) to provide for the regulation of interstate and foreign communications by wire or radio, and for other purposes, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The House amendment strikes out all of the Senate bill after the enacting clause. The Senate recedes from its disagreement to the House amendment with an amendment which is a substitute for both the Senate bill and the House amendment. The differences between the House amendment and the substitute agreed upon by the conferees are noted in the following outline, except for incidental changes made necessary by reason of the action of the conferees and minor and clarifying changes.

The Senate bill provides in Section 2 for the application of the Act to the licensing and regulating of all radio stations as provided in the Act. The House amendment omits this provision. In view of the action taken by the conferees in respect of Title III of the bill, the substitute retains the provision of the Senate bill.

Section 3(e) of the Senate bill defines "interstate communication" and "interstate transmission". The House amendment contains a corresponding definition

the Radio Commission. The two provisos in subsection (a) permit the Commission to issue temporary licenses for stations on vessels or aircraft in cases of emergency.

[¶10:1020] Section 310(a), dealing with limitation on foreign holding and transfer of licenses, is adapted from §12 of the Radio Act as proposed to be modified by HR 7716, with additional limitations as to foreign ownership.

Section 12 of the Radio Act provides that radio station licenses may not be granted or transferred to any corporation of which any officer of director is an alien or of which more than one-fifth of the capital stock may be voted by aliens, their representatives, a foreign government or a company organized under the laws of a foreign country. The Senate bill changes this provision by making the restriction apply also where one-fifth of the capital stock is owned of record by the designated persons and altering the words "may be voted" to "is voted". The substitute (§310(a)(4)) adopts the language of the Senate bill.

Section 12 of the Radio Act restricting alien control of radio station licenses does not apply to holding companies. The Senate bill, adapted from HR 7716, provides that such licenses might not be granted to or held by any corporation controlled by another corporation of which any officer or more than one-fourth of the directors are aliens or of which more than one-fourth of the capital stock is owned of record or voted, after June 1, 1935, by aliens, their representatives, a foreign government, or a corporation organized under the laws of a foreign country. The substitute (§310(a)(5)) adopts the Senate provision with an addition stating that the license may not be granted to or held by such a corporation if the Commission finds that the public interest will be served by the refusal or the revocation of such license.

Section 310(b) is substantially §12 of the Radio Act modified as proposed by HR 7716. The section relates to transfer of radio licenses. As in HR 7716 the authority to approve or disapprove such transfers is extended to cover transfer of stock control in a licensee corporation. The present law is also modified to require the Commission to secure full information before reaching decision on such transfers.

Section 311 is based upon §13 of the Radio Act, modified to leave the Commission discretion in refusing licenses where the applicant has been adjudged by a court to be guilty of a violation of the antitrust laws but where the judgment has not extended to the revocation of existing licenses.

Section 312(a) is based on §14 of the Radio Act modified as proposed by HR 7716 to reduce from 30 to 15 days the period within which a licensee may take exception to the Commission's action in revoking his license. The Senate provision authorizing the Commission to suspend licenses is omitted from the substitute.

Section 312(b) amplifies the Radio Act along the lines proposed by HR 7716 by providing for the modification of station licenses and construction permits in cases where the Commission finds such action in the public interest.

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EXHIBIT 4

U.S. Trade Representative Letter Dated July 20, 1989

THE UNITED STATES TRADE REPRESENTATIVE
Executive Office of the President
Washington, D.C. 20506

SB 1303

RECEIVED
JUL 20 1989
Ans'd.....

The Honorable Sam Farr
Chairman, Committee on Economic
Development and New Technologies
Room 3120
California State Capitol
Sacramento, California

Dear Chairman Farr:

I understand that the California State legislature is considering SB 1303, legislation which would require individuals who are not United States citizens, or legal entities whose controlling shareholders or partners are not United States citizens, to file annual disclosure statements with information regarding their interest in real property in California and their interest in tangible property in businesses with operations in California.

It is my understanding that the disclosure requirement in SB 1303 would impose on foreign direct investors disclosure requirements and potential penalties for failing to file that are not imposed on domestic investors.

Singling out foreign direct investors for annual filing of disclosure statements not only imposes a potentially burdensome and discriminatory reporting requirement on foreign companies and individuals, but also signals that foreign investors may be unwelcome in California. This policy could discourage foreign direct investment in California, resulting in slower economic growth, productivity and job creation and triggering higher interest rates that could hurt a wide range of Californians, including home-buyers and farmers.

SB 1303 would run counter to our longstanding efforts to encourage more open investment practices in other countries. U.S. companies have long suffered under discriminatory procedures in other developed and developing country markets. This discrimination not only affects the economic viability of an investment, but also the resulting production and international trade flows. The United States is pursuing a number of international initiatives in the Organization for Economic Cooperation and Development and the General Agreement on Tariffs and Trade to reduce and eliminate these discriminatory practices, consistent with an overall principle of national treatment. SB 1303 would be contrary to those initiatives and could adversely affect our chances for success.

I understand that the bill may be brought before your Committee on July 18. I would appreciate your support in opposing such discriminatory legislation, which could damage the investment climate of California and undermine our pursuit of more open investment policies in other countries.

Sincerely,

Carla A. Hills

CAH:rst

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EXHIBIT 5

Dept. of Transportation Air Carrier Cases

A. Page Avjet Corporation
B. Premier Airlines, Inc.
C. Northwest Airlines, Inc.

A

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EXHIBIT 5-A

Page Avjet Corporation

Citation 102 C.A.B. 488 (Cite as: 1983 WL 35263 (C.A.B.))
Rank(R) R 7 OF 14
Database FTRAN-DOT
Mode Page

*1 Page Avjet, Citizenship
Docket 40905
Orders 83-7-5 82-8-41

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 1st day of July, 1983

July 1, 1983

ORDER 83-7-5

By Order 82-8-41, August 6, 1982, we tentatively found that Page Avjet Corporation (Page), the parent corporation of the Page group of air taxis [FN1] and a successor corporation to Page Airways, is not a U.S. citizen as defined by section 101(16) of the Act, and that it must cease operations or restructure within 60 days so that it qualifies as a U.S. citizen. [FN2]

On November 8, 1982, Page filed a response requesting that we not make final the above findings and conclusions because it intends to restructure the ownership and control of its air taxi operations. Page submitted a copy of its reorganization plan for us to determine whether the air taxi, as restructured, qualifies as a U.S. citizen. Under this plan, the corporation will issue 1,100 shares of stock. One hundred of these shares will be 'nonvoting common' and one thousand will be 'voting preferred.' Page will own the 'nonvoting' stock; a group of U.S. citizens will own the 'voting' stock. The voting stockholders will have the right to elect the officers and directors, all of whom will be U.S. citizens, and will have day-to-day operational control of the air taxi. The nonvoting stockholders will have the right to exercise control in extraordinary circumstances. For example, approval of the nonvoting class is required before any merger, acquisition or consolidation of the company, proposed by the voting stockholders or company management, is effective. Similarly, the nonvoting stockholders have the right to initiate, and their approval is required for, a company dissolution or liquidation.

By Order 83-1-60, January 17, 1983, we requested Page to submit additional specific information concerning its proposal to clarify the extent of voting power of the nonvoting stockholders. On February 2, 1983, Page responded with the specific powers of the nonvoting stockholders. First, they would have the right to vote on--but not initiate--company mergers, acquisitions and consolidations. Approval of the majority of the nonvoting stockholders is required before any of these acts is effective. Accordingly, the vote of the nonvoting stockholders can block a decision by the voting shareholders on any of these matters. The nonvoting shareholders also have the right to vote on--or initiate--a company liquidation or dissolution. The voting shareholders cannot block a vote by the nonvoting shareholders on these issues; however, the nonvoting shareholders can prevent such action by the voting class. Page characterizes the nonvoting stockholders as having rights which 'are purely negative, purely protective in character.'

Page's proposal states that the nonvoting class vote will be checked by the requirement that the Civil Aeronautics Board approve any vote of the nonvoting

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stockholders to block the decision of the voting stockholders for a merger, consolidation, acquisition, liquidation or dissolution of the company. [FN3]

***2** We have examined Page's proposal and have determined that it fails to satisfy the citizenship requirements of the Act. Section 101(16) defines 'Citizen of the United States' as a 'corporation or association created or organized under the laws of the United States or of any state, territory or possession of the United States, of which the president and two-thirds or more of the board of directors and other managing officers thereof are such individuals and in which at least 75 percentum of the voting interest is owned by controlled by persons who are citizens of the United States or of one of its possessions.' (emphasis supplied)

We have consistently interpreted section 101(16) to mean that (1) at least 75 percent of the outstanding voting stock must be owned by U.S. citizens; and (2) as a factual matter, the carrier must actually be controlled by U.S. citizens. [FN4] In the plan that Page submitted, the first criterion for U.S. citizenship appears to be met. Specifically, all the officers and directors are U.S. citizens and all of the stock that has been designated as having a voting interest is owned by bonafide U.S. citizens. Second, even considering the nonvoting stockholders to have a voting interest, the amount of that interest is below the 23 percent maximum specified in the Act for noncitizens.

In examining the control aspect for purposes of determining citizenship, we look beyond the bare technical requirements to see if the foreign interest has the power--either directly or indirectly--to influence the directors, officers or stockholders. [FN5] We have found control to embrace every form of control and to include negative as well as positive influence; we have recognized that a dominating influence may be exercised in ways other than through a vote. [FN6] In the **Daetwyler** case, [FN7] we found that actual control or the potential for control existed because of the close personal and business relationships that existed between Mr. **Daetwyler,** a Swiss citizen who owned 25 percent of the applicant's stock and represented one-third of the corporation's board of directors, and the applicant's U.S. stockholders, officers and directors. [FN8]

In the Premiere Airlines, Inc. Fitness Investigation, Order 82-5-11, May 5, 1982, the carrier's citizenship was at issue even though there was never any question that 75 percent of the stock was owned by U.S. citizens. In that case, we granted the application for a certificate only after the applicant restructured its stock plan to remove all foreign influence over the voting interests through the establishment of a voting trust. We approved the voting trust as a means of meeting the actual control test and, therefore, concluded that the carrier had met the burden of establishing that it was a U.S. citizen under section 101(16). [FN9]

Page's proposal brings into question the second aspect of the test, the issue of actual control, by virtue of the degree of voting power held by the minority 'nonvoting' stockholders. Unlike Premiere, Page's proposal fails to meet the citizenship definition because the nonvoting stockholders, who are not U.S. citizens, do in fact have the power to control the company.

***3** In Page's proposal, the nonvoting stockholders do not have day-to-day operational control; however, they have the right to influence many of the crucial decisions of the company. They have the power to block any proposal by the voting stockholders for a company consolidation, merger or acquisition,

[FN10] Similarly, they have the power to dissolve the company and liquidate its assets. If the nonvoting stockholders disapprove of the way that the officers and directors conduct the company's affairs, they can vote for dissolution of the company. Given the nonvoting shareholders' power, it could be expected that the officers, directors and voting stockholders would follow their wishes.

Page characterizes the role of the nonvoting stockholders as 'passive', 'protective' and 'minor'; we cannot agree. We find that the nonvoting stockholders have substantial direct control that exceeds the percentage of stock that they hold and indirect control over the company's voting stockholders, officers and directors. The fact that their power may be negative in no way diminishes the fact of that control. [FN11] Under no circumstances can the power that the nonvoting stockholders hold over this company be considered anything less then substantial since those powers concern whether the company can continue to exist.

The provision requiring Board approval in cases where the nonvoting stockholders act against the decisions of the voting stockholders on issues of company mergers, consolidations, acquisitions, dissolutions and liquidations does not change the extent of noncitizen control. The concept of control includes the power to dominate and that power need not be exercised for control to exist. [FN12] Likewise the fact that there are restrictions on the exercise of such power does not vitiate the existence of a control relationship. [FN13] In any event, we are not inclined to approve any agreement of this sort that thrusts us into the middle of an air carrier's business decisions.

We cannot find that Page's reorganization comports with the Act's citizenship requirements; the plan does not insulate the U.S. citizen officers and directors from the actual or potential control or influence of the non U.S. citizens. We do not dispute that Page has a legitimate interest in protecting its investment in the air taxi so long as it retains some ownership of stock; however, this interest cannot take precedence over the requirements of the Act.

In a limited number of cases, including Pemiere, we have approved a voting trust arrangement as a method of insulating the carrier from the prohibited influence. In Premiere, we approved an agreement whereby the carrier removed the U.S. Citizen who was tainted by foreign control and transferred his voting interest to an independent voting trustee who would vote the stock in concert with the remaining U.S. stockholder. In the merger area, we have allowed one air carrier to acquire stock in another air carrier prior to Board approval of the acquisition by placing that stock in a voting trust, provided that (1) the acquired stock be voted on a proportional basis with the remaining stock; (2) the acquisition of stock be limited; and (3) there exists an interest adverse to that of the acquiring company with whom the trustee could cast his votes. [FN14] In the instant case, Page could conceivably restructure in a manner that addresses the concerns that we have expressed in these and other voting trust cases.

***4** Page has itself suggested an alternative solution which would appear to satisfy its desire to protect its investment without raising the control questions presented by its current plan. In its information response of February 2, Page argued that its residual voting rights were the equivalent of a buyout provision under which a class of shareholders reserves the right to be bought out according to a predetermined formula in the event of specified occurrences, such as acquisition or mergers. If Page were to substitute such a

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provision for its current proposal to retain rights to vote on mergers and acquisitions and liquidations and to block decisions of new U.S. citizen shareholders in this area, its power to influence decisions concerning the air carrier would be greatly reduced. Page has proposed to purchase nonvoting common stock while selling to outsiders cumulative preferred voting stock. Assuming a buyout formula which would not be excessively burdensome to new shareholders, the combination of the limited rights accruing to Page as a nonvoting common shareholder vis-a-vis the preferred stockholders, and the buyout provision, would appear to protect Page's investment adequately without giving Page a substantial ability to influence the air taxis activities. We would entertain a reorganization plan for Page that follows this plan to restructure.

For the reasons stated above, we find that Page has failed to meet its burden of establishing that it meets the citizenship requirements under its proposal. Since we find that Page's proposal to restructure fails to comport with the citizenship requirements, we will make final our tentative findings and conclusions set forth in Order 82-8-41 that Page Avjet is not a U.S. citizen. Further, we will direct Page Avjet to cease operations within 60 days of the service date of this order. We will cancel the registrations under Part 298 of Page Airways, Inc. (Rochester), Page Airways of Albany, Inc., and Page Airways, Inc., (Washington) at that time.

We will, however, give the carrier 30 days from the service date of this order to submit a plan of reorganization that comports with the statute and the policy considerations discussed above. If such a plan is forthcoming, we will stay this order pending a determination of the merits of this plan.

ACCORDINGLY,

1. We make final our tentative conclusions in Order 82-8-41 that Page Avjet (1) is not a citizen of the U.S. as defined by section 101(16) of the Act; (2) is not eligible to register as an air taxi under Part 298; and (3) must cease operations no later than September 6, 1983;
2. We grant the request of Page for Leave to File an Amended Response; and
3. We will serve a copy of this order on Page Avjet, Inc. and the Federal Aviation Administration.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR
Secretary

All Members concurred.

ORDER 82-8-41 TO SHOW CAUSE DATED AUGUST 6, 1982

***5** On September 11, 1981, Page Airways, an air taxi, was acquired by GEI II, Co., a shell subsidiary of Guthrie North American Inc. [FN1] In October of 1981, GEI II changed its name to Page Avjet Corporation. Guthrie North American is owned, through a sucession of four wholly-owned subsidiaries (Guthrie Investments Inc., Guthrie Corporation, Inc., Guthrie Overseas Holding Limited and Guthrie Corporation Limited), by Permodalan Nasional Berhad, a corporation owned by the government of Malaysia.

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On December 21, 1981 and March 16, 1982, Page Avjet submitted amendments to Page Airways' Part 298 registration forms. [FN2] The amendments reflect changes in name and address, aircraft type, and ownership. [FN3] The staff did not accept the amended registration because the change in ownership raises the issues of whether Page Avjet is a U.S. citizen under section 101(16) of the Act, and whether it can register as an air taxi under Part 298. [FN4]

In spite of this change in ownership, Page Avjet states that it is a U.S. citizen and an air taxi in compliance with Part 298. It argues that it meets the statutory definition of 'citizen of the United States' because all of its officers and directors are U.S. citizens and its parent company is incorporated in Delaware.

We have carefully considered Page Avjet's arguments on the citizenship issue and we tentatively find that it is not a citizen of the United States as defined in the Act. Section 101(3) of the Act states that an air carrier must be a U.S. citizen. Section 101(16) defines 'Citizen of United States,' in pertinent part, as:

> (a) an individual who is a citizen of the United States or one of its possessions, . . . or (c) a corporation or association created or organized under the laws of the United States, of which the president and two-thirds or more of the board of directors and other managing officers thereof are such individuals and in which at least 75 percentum of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

Thus, to be a U.S. citizen, Page Avjet must be 75% owned by persons who themselves meet the definition of a U.S. citizen as set out above. Page Avjet fails to meet this test. Permodalan Nasional Berhad, Page Avjet's ultimate owner, is a Malaysian corporation and not a U.S. citizen. Consequently, its wholly-owned subsidiary, Guthrie Corporation Limited, is not a U.S. citizen because it is not 75% owned by a U.S. citizen. By applying this analysis to the rest of the corporations in this chain of ownership, none, including Page Avjet, is a U.S. citizen.

Because Page Avjet is not a U.S. citizen, it is not an air carrier within the meaning of the Act and therefore cannot register as an air texi. Consequently, it must cease operations or change its ownership so that it comes within the definition of a U.S. citizen as set forth in section 101(16) of the Act.

We direct Page Avjet to show cause within 30 days from the date of service of this order why we should not make final the following tentative findings: (1) that Page Avjet is not a U.S. citizen within the meaning of section 101(16) of the Act; (2) that it cannot register as an air taxi under Part 298; (3) that, within 60 days of the service date of this order, it must terminate operations or restructure so to come within the definition of a U.S. citizen as defined by the Act; and (4) that the registrations under Part 298 of Page Airways, Inc. (Rochester), Page Airways of Albany, Inc., and Page Airways, Inc. (Washington) should be cancelled.

***6** ACCORDINGLY,

1. We tentatively find that Page Avjet (1) is not a citizen of the U.S. as defined by section 101(16) of the Act; (2) cannot register as an air taxi under Part 298; (3) must cease operations or restructure within 60 days of the service date of this order so that it qualifies as a U.S. citizen; and (4) that the registrations under Part 298 of Page Airways, Inc. (Rochester), Page

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Airways of Albany, Inc., and Page Airways, Inc. (Washington) should be cancelled;

2. We direct any interested person to show cause no later than September 8, 1982 why we should not make final our tentative findings and conclusions in ordering paragraph 1, above;

3. We will serve a copy of this order on Page Avjet, Inc. and the Federal Aviation Administration.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR
Secretary

All Members concurred.

FN1. Page Airways, Inc. (Rochester), Page Airways of Albany, Inc. and Page Airways, Inc. (Washington).

FN2. We also tentatively concluded that Page cannot register as an air taxi under Part 298 and that the registrations under Part 298 of Page Airways, Inc. (Rochester), Page Airways of Albany, Inc., and Page Airways Inc. (Washington) should be cancelled.

FN3. On April 28, 1983, Page filed an Amended Response, accompanied by a Motion for Leave to File the Response. We will grant the motion. In that Response, Page modified its proposal to require CAB approval in cases where the nonvoting shareholders exercise the right to dissolve or liquidate the air taxi operation. In its prior pleading, only CAB notification was required.

FN4. Order 82-5-11, May 5, 1982.

FN5. Uraba, Medellin, Cent. Airways-Canal Zone-Colombia Op., 2 C.A.B. 334, 337 (1940).

FN6. Eastern-Colonial Control Case, 20 C.A.B. 629, 634-35 (1955).

FN7. Willye Peter **Daetwyler,** d/b/a Interamerica Airfreight Co., Foreign Permit, 58 C.A.B. 118 (1971).

FN8. In that case we concluded that since those stockholders, officers and directors were employees of other corporations controlled by **Daetwyler** and that the applicant would continue to do business as part of the system of **Daetwyler** controlled companies, he would be in a position to sufficiently influence decisions of the officers and board of directors so as to constitute control.

FN9. In Premiere's initial application, one of the co-founders, who was a U.S. citizen, had borrowed the start-up capital from his non U.S. citizen employer. The terms of the loan agreement highly favored the borrower. On August 27, 1981, Administrative Law Judge John M. Vittone issued an Initial Decision which found that the non U.S. citizen was in a position to influence the U.S. citizen

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and through him the carrier. He concluded that the applicant had failed to establish that it was a U.S. citizen within the meaning of section 101(16) of the Act. Before we ruled on the case, the applicant requested a stay to reorganize and resolve its citizenship status. By Order 82-1-97, January 20, 1982, at the applicant's request, we remanded the case to the Judge. The carrier submitted its revised plan in which it removed the U.S. citizen from the carrier's management, placed his voting interest in a voting that to be administered by an independent U.S. citizen and resolved not to accept any further funds from the U.S. citizen or his employer. On April 6, 1982, Judge Vittone issued a second Initial Decision, finding the carrier a citizen. By Order 82-5-11, May 5, 1982, we adopted his decision.

FN10. In the context of section 408 we have repeatedly held that the ability to veto merger or acquisition or other significant corporate action constitutes control, .e. West Coast Airlines, Inc. Enforcement Case, 42 CAB 561, 587-590 (1965) and Jetwest International Airways Fitness Investigation, Order 82-1-88, January 19, 1982.

FN11. National-Maytag Interlocking Relationships, 40 CAB 161, 165 (1964).

FN12. Railway Express Agency et al., Enforcement Proceeding, 47 CAB 916, 918 (1967).

FN13. American Airlines Lease Accounting Procedures, 47 CAB 1078, 1079 (1967).

FN14. Order 81-3-30, March 3, 1981 (Acquisition of Control of Continental Air Lines, Inc. by Texas International Airlines, Inc.); Order 78-12-173, December 26, 1978 (Tiger International-Seaboard Acquisition Case); and Order 78-10-100, October 20, 1978 (Texas International-National Acquisition and Enforcement Case).

FN1. Between December 1981 and April 1982, our staff received seven letters explaining changes in the Page Avjet ownership and corporate structure.

FN2. The Page Airways registrations indicate operations under the names of Page Airways, Inc. (Rochester), Page Airways of Albany, Inc. and Page Airways, Inc. (Washington).

FN3. Section 298.23 requires air taxi operators to notify our staff of any change of name, address, and type of operations or cessation of operations.

FN4. In the March 16, 1982 amended registration form, Page Avjet states that it is a U.S. citizen.

CAB
102 C.A.B. 488, 1983 WL 35263 (C.A.B.)
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